



**MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY**

ALEX HINDS, DIRECTOR

**STAFF REPORT TO THE PLANNING COMMISSION  
BRUCE AND JOANNE FRIEDMAN LAND DIVISION**

Item No:	6.	Application No:	LD 05-7
Applicant:	Kenneth Kurtzman, Architect	Owner:	Bruce and Joanne Friedman
Property Address:	90 Legend Road, San Anselmo	Assessor's Parcel:	176-221-02
Hearing Date:	September 12, 2005	Planner:	Anna M. Camaraota

**RECOMMENDATION: Deny**  
**APPEAL PERIOD: 10 Calendar Days to the Board of Supervisors**  
**LAST DATE FOR ACTION: Not Applicable**

**PROJECT DESCRIPTION:**

The applicant, Kenneth Kurtzman, on behalf of Bruce and Joanne Friedman, is proposing to subdivide an approximately 2.32-acre parcel located along the western side of Legend Road in the community of Sleepy Hollow. The property is currently developed with a single-family residence, pool, and pool shed. As proposed, the Land Division would result in two parcels identified on the proposed Friedman Subdivision Tentative Map as Lot 1 and Lot 2. Lot 1 is occupied by the existing residence and would be approximately 1 acre in size, and Lot 2 is currently occupied by a pool and pool shed and would be approximately 1.32 acres in size. The property is located within the Ross Valley Sanitary District and Marin Municipal Water District and would be eligible to receive sanitary and water service for new construction. The applicant has submitted a conceptual plan for a future residence on proposed Lot 2 that would be sited uphill of the existing pool, which would be demolished to create a landscaped parking court in front of the residence.

**SUMMARY RECOMMENDATION:**

Staff is recommending that this project be denied due to inconsistencies with Marin Countywide Plan policies and zoning requirements that are discussed in this report. Due to the fundamental nature of these inconsistencies, the recommended denial is being referred to the Planning Commission prior to deeming the project as complete and without environmental review. This approach is intended to relieve the applicant of the time and expense associated with providing additional application materials and undertaking environmental review for a project that, according to staff's analysis, could not be approved.

**GENERAL INFORMATION:**

General Plan Land Use Designation:	SF4 (Single Family, one to two units per acre), partial Ridge and Upland Greenbelt
Zoning:	R-1:B-D (Sleepy Hollow Community Standards)
Lot size:	Approximately 2.3 acres
Adjacent Land Uses:	Single-Family, Residential
Vegetation:	Predominantly Oak and Bay trees
Topography and Slope:	Approximately 43.76% average, east-facing slope
Environmental Hazards:	None identified

## **ENVIRONMENTAL REVIEW:**

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects that are disapproved by a public agency.

## **PUBLIC NOTICE:**

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accord with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject property.

## **PROJECT SETTING:**

The subject property is located within the community of Sleepy Hollow. Access to the property is taken from the valley floor, extending west from Butterfield Road. The lower portion of Legend Road is located at the edge of the valley floor and is characterized by relatively small, level lots with development consisting of higher floor area ratios, consistent front yard setbacks from front property lines, and limited separation between residences, particularly along the northerly side yards. As Legend Road ascends the steeply wooded hillside and transitions into the Ridge and Upland Greenbelt area, the predominant development pattern is characterized by increased lot sizes with varying front setbacks and increased separation of homes. The 2.32-acre subject property has historically functioned as a single-family lot. Although the subject property exceeds minimum lot size requirements (see *Zoning Consistency* below), approximately 62 percent of the 2.32-acre lot is located within a designated Ridge and Upland Greenbelt area. In addition, the irregular configuration of the lot, its juxtaposition to the roadway, and steep terrain (43.76% slope) constrict building to the lower portion of the lot adjacent to Legend Road. The proposed Land Division would dissect the property at a perpendicular angle to the roadway, resulting in narrow building areas with minimal road frontages of 22 feet for Lot 1 and 46.91 feet for Lot 2. These factors create an effective building area of approximately 5,500 square feet for proposed Lot 2.

## **ANALYSIS:**

In order to approve the proposed Land Division, Marin County Code Section 22.84.060 requires that findings be made that the project is consistent with the Marin Countywide Plan and the requirements of the Development Code.

### *Plan Consistency*

The proposed project is inconsistent with the following goals and policies of the Marin Countywide Plan (CWP).

- A. The CWP contains policies that encourage maintaining the character of existing neighborhoods and avoiding concentration of development in areas designated as a Ridge and Upland Greenbelt (Policies EQ-3.8, EQ-3.18, EQ-3.19, and EQ-3.20). The project is inconsistent with these policies because it would result in the creation of a new residential lot that is impractical for improvement due to its irregular configuration, steepness of terrain, and proximity of the proposed building site to existing structures within the Ridge and Upland Greenbelt area. These conditions would result in a constrained building envelope that could not be developed in a manner which is compatible with the character of the immediate neighborhood, as discussed below under *Zoning Consistency* and *Hillside Subdivision Design*.
- B. The CWP policies require the visual qualities of the natural and built environment to be considered in the design of projects with a focus on minimizing removal of large trees. (Policy EQ-3.11 and Policy EQ-3.14) The project would result in the creation of a new residential lot with a building area that encompasses a number of significant trees that would need to be removed to accommodate future residential development. These trees include approximately six oak and bay trees.
- C. The project would result in the creation of a new residential lot with a building area occupying a steep hillside (average 43.76 percent) where substantial grading would need to occur to accommodate future residential development. (Policy EQ-3.16)

## *Zoning Consistency*

The proposed project would not be consistent with the minimum requirements of the governing R-1:B-D (Sleepy Hollow Community Standards) zoning district or hillside subdivision design standards. The required minimum lot size for most properties in the Sleepy Hollow community is 15,000 square feet with a minimum frontage of not less than 100 feet on a public right of way. Where properties have a slope of greater than 15 percent, minimum lot area is determined as a multiple of 1,000 square feet for each percentage of lot slope, to a maximum of 45,000 square feet. Based on this standard, the minimum lot size required for the property would be 43,760 square feet according to the following calculation:

$$43.76 \text{ (slope\%)} \times 1,000 \text{ square feet} = 43,760 \text{ square feet}$$

While the regulations do not specifically address minimum requirements for frontage along a public right-of-way for properties in excess of 15,000 square feet, the intent of the minimum lot area regulations is to create larger lots to respond to topographic conditions that would allow for adequate separation of structures for hillside development. It is implied that larger lots would accomplish this goal by the very nature of their increased size and is further supported by regulations contained in Chapter 22.82 (Subdivision Design Standards) of the Marin County Code, which state that (1) unconventional lot design to meet lot-slope requirements shall not be permitted; (2) lots shall not be created which are impractical for improvement due to steepness of terrain; and (3) lots should be designed with configurations that ensure each property owner can easily understand parcel boundaries, and to respect environmental and topographic conditions of the site.

The project would result in the following two parcels: Lot 1 (occupied by the existing residence) would be 43,600 square feet (approximately one acre) in size, and Lot 2 (currently occupied by the pool and pool shed) would be 57,560 (approximately 1.32 acres in size). Due to the 43.76 percent average slope of the subject property, the proposed lot occupied by the existing residence would not comply with the minimum 43,760 square foot lot area required by the governing zoning district. While minor adjustments to the location of the proposed property boundary could resolve this inconsistency, the Land Division would necessarily rely on an unconventional lot design in order to meet the minimum lot-slope requirements and therefore would not be consistent with the requirements of Marin County Code §22.82.070 (Lot Configuration and Minimum Area).

## *Hillside Subdivision Design*

The purpose of the provisions of the Hillside Subdivision Design (Section 22.82.050.A of the Marin County Code) are to ensure the creation of suitably designed and developed parcels in all hillside areas of the County. Minimum lot area requirements are determined based upon lot slope to ensure that lots with steep terrain are sufficiently large to accommodate future development that is consistent with the governing zoning district standards and is compatible with existing neighborhood development.

As discussed above, the proposed Land Division does not comply with §22.82.050.C.2 (Minimum lot area based on slope) of the Marin County Code. In addition, the proposed Land Division does not comply with §22.82.050.C.3 (Lot Design) of the Marin County Code which requires lots to be developable, buildable, and reasonably accessible. Unconventional lot design to meet lot-slope requirements shall not be permitted, and lots shall not be created which are impractical for improvement due to steepness of terrain and other natural or manmade physical conditions.

The applicant has submitted a conceptual plan for a future residence on proposed Lot 2 that would be sited 48 feet from the front property line and uphill of the existing pool, which would be demolished to create a landscaped parking court in front of the residence. The conceptual plans include a site plan and cross section for a 4,000 square-foot single-family residence with the following setbacks from corresponding property lines: 48 feet from the front property line, 10 feet from the right side property line, and 14 feet from the left side property line. Due to the steepness of the terrain and the narrowness of the lot, construction of the 4,000 square would be stepped up the hillside, resulting in a four level, 41.5-foot high structure as measured from the top of the lowest finished floor to the roof above. While the conceptual plans comply with minimum 20-foot front yard setback and 10-foot side yard setback required by the governing R-1:B-D zoning standards, the residence would not comply with the 30-foot maximum height standards without substantial modifications and reductions in the size of future single-family construction. Although this inconsistency may be resolved through the future design of a residence, the apparent

difficulty in designing a residence that is compatible with surrounding development and that meets the maximum height standard reflects the unsuitability of the proposed new lot for future development.

### *Summary*

The proposed Land Division would rely on an irregular lot configuration in order to comply with minimum area requirements. The configuration of the newly created lots would result in property boundaries that are illogical and which would not respect the topographic condition of the site. The newly created lots would be narrow, with street frontages of 22 feet and 46.91 feet, respectively, which ascend approximately 500 feet up the face of the 43.76 percent slope in a skewed angle from the roadway. The proposed irregular configuration of the steep terrain would limit future building to a small portion of the newly created vacant lot and would not allow for adequate separation of structures that are typical within the immediately surrounding neighborhood.

Preliminary site plans and cross sections for a hillside home on the newly created undeveloped lot demonstrate that development of an approximately 4,000 square foot residence would require removal of several significant trees and substantial grading at the toe of the slope which fronts along Legend Avenue and would not likely comply with Countywide Plan Policies related to Visual Qualities and Views (EQ 3.11), Protection of Trees (EQ 3.14), and Minimization of Excavating, Grading, and Filling (EQ 3.16). In addition, the preliminary plans demonstrate that development of an approximately 4,000 square foot residence would result in a four level, 41.5-foot high structure that would not comply with the maximum 30-foot height standard required by the governing R-1:B-D (Sleepy Hollow Community Standards) Zoning District standards, is not proportional to the apparent size of the lot, and would therefore not be consistent with Countywide Plan policies related to the Built Environment (EQ-3.8), Visual Qualities And Views (EQ-3.11), Scale Of Development (EQ-3.25), and Hillside Design Guidelines (EQ-3.28).

### **CONCLUSION:**

For the reasons discussed above, the proposed Land Division is inconsistent with the Marin Countywide Plan and with Marin County Development Code. Consequently, staff is recommending that the proposed project be denied.

### **RECOMMENDATION:**

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution denying the Bruce and Joanne Friedman Land Division.

- Attachments:
1. Proposed resolution recommending denial of the Bruce and Joanne Friedman Land Division.
  2. Location Map
  3. Assessor's Parcel Map
  4. Proposed Tentative Map
  5. Example Hillside House
  6. Ridge and Upland Greenbelt Delineation

MARIN COUNTY PLANNING COMMISSION

RESOLUTION \_\_\_\_\_

A RESOLUTION DENYING THE BRUCE AND JOANNE FRIEDMAN LAND DIVISION  
90 LEGEND ROAD, SAN ANSELMO  
ASSESSOR'S PARCEL 176-221-02

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**SECTION I: FINDINGS**

- I. WHEREAS Kenneth Kurtzman, on behalf of Bruce and Joanne Friedman, has submitted an application to divide an approximately 2.32-acre parcel located along the western side of Legend Road in the community of Sleepy Hollow into two lots. The property is currently developed with a single-family residence, pool, and pool shed. As proposed, the Land Division would result in two parcels; the first (occupied by the existing residence) would be approximately one acre in size, and the second (currently occupied by the pool and pool shed) would be approximately 1.32 acres in size. The subject property is located at **90 Legend Road, San Anselmo**, and is further identified as **Assessor's Parcel 176-221-02**.
- II. WHEREAS the Marin County Planning Commission held a duly-noticed public hearing on September 12, 2005, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Planning Commission finds that the California Environmental Quality Act (CEQA) does not apply to projects that are disapproved pursuant to Section 15270 of the CEQA Guidelines. Due to the following findings of project inconsistency with applicable County policies and zoning requirements, the Planning Commission finds that the project could not be approved as proposed.
- IV. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the goals and policies contained in the Marin Countywide Plan (CWP), as specified below.
  - A. The proposed project would result in the creation of a new residential lot (proposed Lot 2) that is impractical for improvement due to irregular configuration, steepness of terrain, and location within a Ridge and Upland Greenbelt, because it would result in a constrained building envelope that could not be developed in a manner which is compatible with the character of the immediate neighborhood; (Policies EQ-3.8, EQ-3.18, EQ 3-19, and EQ-3.20)
  - B. The proposed project would result in the creation of a new residential lot with a building area that encompasses a number of significant trees that would need to be removed to accommodate future residential development; (Policy EQ-3.11 and Policy EQ-3.14) and
  - C. The proposed project would result in the creation of a new residential lot with a building area occupying a steep hillside (average 43.76 percent) where substantial grading would need to occur to accommodate future residential development. (Policy EQ-3.16)
- V. WHEREAS the Marin County Planning Commission finds that the project could not be redesigned to comply with the development policies contained in the CWP because the Land Division would necessarily rely on an irregular lot configuration in order to comply with minimum lot area requirements.

VI. WHEREAS the Marin County Planning Commission finds that mandatory findings for approval of a Land Division, pursuant to Marin County Code Section 22.84.060, could not be made for the project, as follows.

- A. Required findings for approval. The review authority may approve a Tentative Map only when it shall first find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the Marin Countywide Plan, Local Coastal Program, and any applicable Community Plan and Specific Plan, and that none of the findings for denial in Subsection D below (Findings Requiring Denial) can be made. The findings shall apply to each proposed parcel as well as the entire subdivision, including any parcel identified as a designated remainder in compliance with Map Act Section 66424.6.**

As indicated above in Finding IV, the project is not consistent with the Marin Countywide Plan because the project would result in the creation of a new residential lot that is impractical for improvement due to its irregular configuration, steepness of terrain, and location within a Ridge and Upland Greenbelt. These conditions would result in a constrained building envelope that could not be developed in a manner which is compatible with the character of the immediate neighborhood. (Policies EQ-3.8, EQ-3.18, EQ 3-19, and EQ-3.20) In addition, the project would result in the creation of a new residential lot with a building area occupying a steep hillside (average 43.76 percent) that encompasses a number of significant trees, where substantial grading and tree removal would need occur to accommodate future residential development (Policy EQ-3.11, Policy EQ-3.14, and Policy EQ-3.16)

- B. Supplemental findings. In addition to the findings required for approval of a Tentative Map by Subsection A. above (Required Findings for Approval), the following findings are also required when they are applicable to the specific subdivision proposal.**

- 1. It is in the interest of the public health and safety, and it is necessary as a prerequisite to the orderly development of the surrounding area, to require the construction of road improvements within a specified time after recordation of the Parcel Map, where road improvements are required (see Section 22.82.080).**

Not applicable. The property is located on an improved public right-of-way.

- 2. Any findings required by Sections 22.88.030 (Condominium Conversions) for condominium conversions.**

Not applicable. The project does not consist of a condominium conversion.

- C. Findings for waiver of Parcel Map. If waiver of a Parcel Map has been requested with the Tentative Map application, the review authority shall determine whether the findings required by Section 22.86.030 (Waiver of Parcel Map) can also be made.**

Not applicable. The applicant has not requested a waiver of a Parcel Map in conjunction with this application.

- D. Findings requiring denial. As required by Map Act Section 66474, a Tentative Map shall be denied if the review authority makes any of the following findings:**

- 1. The proposed subdivision including design and improvements is not consistent with the Marin Countywide Plan or an applicable Community Plan or Specific Plan.**

Refer to finding A above.

**2. The site is not physically suitable for the type or proposed density of development.**

As indicated above in Finding VI.A and Finding IV, the project would result in a constrained building envelope that could not be developed in a manner which is compatible with the character of the immediate neighborhood (Policies EQ-3.8, EQ-3.18, EQ 3-19, and EQ-3.20). In addition, conceptual plans submitted by the applicant demonstrate the apparent difficulty in designing a residence that meets the 30-foot maximum height standard required by the governing R-1:B-D zoning district.

**3. The design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or injure fish or wildlife or their habitat.**

Review of the Natural Diversity Data Base Maps on file with the Marin County Community Development Agency (CDA) did not reveal that the subject property is located in an area that is inhabited by special status species of plants or animals.

**4. The design of the subdivision or type of improvements is likely to cause serious public health or safety problems.**

The Ross Valley Sanitary District has reviewed the plans and has indicated that the project would have no impact on the public sanitary sewer. The Marin Municipal Water District has reviewed the plans and has indicated that the subdivision would be eligible for water service upon request and fulfillment of District requirements. Finally, the Department of Public Works has reviewed the plans and has indicated that an easement must be shown on the tentative map to accommodate PG&E facilities serving the site. Therefore, the project does not conflict with this finding.

**5. The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large for access through or use of, property within the proposed subdivision. This finding may not be made if the review authority finds that alternate easements for access or use will be provided, and that they will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record, or to easements established by judgement of a court of competent jurisdiction, and no authority is hereby granted to the review authority to determine that the public at large has acquired easements of access through or use of property within the proposed subdivision.**

Not applicable. No easements for public access through, or for use of the property have been identified on the property.

**6. The proposed subdivision is not consistent with all applicable provisions of this Development Code, any other applicable provisions of the County Code, and the Map Act.**

Due to the 43.76 percent average slope of the subject property, the proposed lot occupied by the existing residence would not comply with the minimum 43,760 square foot lot area required by the governing R-1:B-D (Sleepy Hollow Community Standards) Zoning District standards and by Marin County Code §22.82.050.D (Hillside Subdivision Design – Special Area Lot Sizes/Slope Requirements) which calculates minimum lot area based on 1,000 square feet for each percent of slope.

Contrary to the Hillside Subdivision Design standards set out in Marin county Code Section 22.82.050.C.3, the new residential lot is impractical for improvement due to the steepness of terrain, the significant amount of grading expected with future development, the removal of trees, and the constrained size of the proposed building area due to the narrow panhandle portion of the proposed lot and the Ridge and Upland Greenbelt situated in the upper elevations of the property. Preliminary site plans and cross sections showing development of the new residential lot demonstrate the difficulty in developing the property in compliance with the 30-foot maximum height standard required by the governing R-1:B-D (Sleepy Hollow Community Standards) Zoning District standards.

**SECTION II: ACTION**

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission hereby denies the Bruce and Joanne Friedman Land Division based on the inability to make affirmative findings that the project is consistent with the goals and policies of the Marin Countywide Plan and the County's zoning and subdivision ordinances.

**SECTION III: APPEAL RIGHTS**

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$700.00 filing fee must be submitted in the Community Development Agency, Room 308, Civic Center, San Rafael, no later than **4:00 p.m.** on **September 22, 2005.**

**SECTION IV: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 12th day of September 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

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STEVE THOMPSON, CHAIR  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Kim Shine  
Recording Secretary